

In the Court of Appeals of the State of Alaska

Bobbie Hunter,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13250**

Order

Motion for Representation Hearing and
to Stay Briefing Deadline

Date of Order: **5/12/2020**

Trial Court Case No. **4FA-18-00729CR**

The Appellant's counsel, Rachel E. Cella, has filed a motion asking this Court to remand this case to the district court for a representation hearing. Ms. Cella explains that the Appellant, Bobbie Ann Hunter, has advised counsel that she wishes to represent herself. Ms. Cella also requests a stay of briefing to accommodate the representation hearing.

Because Ms. Hunter has a constitutional right to counsel to assist her in the appeal, unless and until she knowingly and intelligently waives that right, any legal proceedings in which she is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction). Therefore, because Ms. Hunter desires to represent herself, the district court must determine whether Ms. Hunter is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether she is capable of representing herself on appeal.

Accordingly, **IT IS ORDERED:**

1. Ms. Hunter's case is remanded to the district court to determine whether Ms. Hunter wishes to represent herself. The district court shall conduct an inquiry to make sure that Ms. Hunter understands the benefits of counsel and the dangers of representing herself, and to make sure that Ms. Hunter is minimally competent to

represent herself — *i.e.*, that she is capable of presenting a comprehensible argument on appeal.

2. As a suggestion, the district court might advise Ms. Hunter of the following aspects of litigating an appeal:

A criminal defendant who wishes to represent herself on appeal should bear in mind that an appellate court can not re-weigh the evidence or re-determine the facts of her case. Nor, absent plain error, will an appellate court address claims that were not raised below. Rather, an appellate court can only decide whether errors of law or mistakes of procedure were committed during the trial court proceedings. Because of this, it is important for a person who is pursuing an appeal to have a working knowledge of criminal law and criminal procedure, as well as good legal research skills, so that they can find the statutes and court decisions that apply to their case. Attorneys have specialized training and experience in these matters, so it is usually better to have an attorney's assistance when pursuing an appeal.

In addition, it helps to have good writing skills — because, in an appeal, a person's arguments are presented to the court primarily in written briefs.

Moreover, the rules governing an appeal are often technical. (For example, there is Appellate Rule 210(b)(1) — the rule that says that if a person wants the appellate court to have a transcript of what happened in the trial court, the person must designate the portions of the trial court proceedings to be transcribed.) Again, attorneys are generally familiar with these rules, or can discover them without much trouble, so it is usually better to have an attorney's assistance.

3. If, after Ms. Hunter is advised of the benefits of counsel and the dangers of self-representation, she still wishes to represent herself, and if the district court

concludes that Ms. Hunter is at least minimally competent to do so, the district court shall inform this Court of these circumstances. Ms. Hunter will then be allowed to represent herself in this appeal.

4. If, on the other hand, Ms. Hunter decides not to represent herself, or if the district court concludes that Ms. Hunter is not minimally competent to pursue this appeal on her own, then Ms. Cella shall continue to represent Ms. Hunter. The district court shall inform this Court of these circumstances.

5. Because Ms. Hunter has a constitutional right to the assistance of counsel on appeal, she must expressly and knowingly waive this right if she wishes to dismiss her court-appointed counsel and represent herself. Accordingly, if Ms. Hunter is unable to make up her mind about whether to represent herself, this means that she has *not* waived her right to counsel, and Ms. Cella shall continue to represent her in this appeal.

6. The district court's report on these matters shall be transmitted to this Court on or before June 9, 2020. At the request of the district court, this deadline may be extended if necessary. In remanding this case, this Court acknowledges that under the limitations imposed because of the current public health crisis, this hearing should be done telephonically if possible. If the hearing cannot be done telephonically, then

Bobbie Ann Hunter v State of Alaska, File No. A-13250
May 12, 2020 - p. 4

the district court shall inform this Court of this circumstance as soon as possible.

7. The request to stay briefing is **GRANTED**. The Appellant's opening brief will be due 30 days after the district court distributes its findings.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in cursive script, reading "Joyce Marsh", written over a horizontal line.

Joyce Marsh, Deputy Clerk

cc: Judge Patrick S. Hammers
Distribution:

Email:
Cella, Rachel E., Public Defender
Buettner, David